

(2009) 05 AHC CK 0218
In the Allahabad High Court

Devendra Singh Yadav

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0218

Hon'ble Judges : Chandramauli Kumar Prasad, CJ and Dilip Gupta, J

Final Decision : Dismissed

Judgement

Dilip Gupta, J.

Writ petitionerappellant, aggrieved by judgment and order dated 31.03.2009 passed by a learned Judge in Civil Misc. Writ Petition No. 17227 of 2009 dismissing the writ petition, has preferred this special appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952.

Shorn of unnecessary details, facts giving rise to the present appeal are that the writ petitionerappellant, hereinafter referred to as the ""appellant", is a Chakbandi Lekhpal in Bulandshahr. He has been suspended on the allegation that he made entries in the revenue record expunging the name of Gram Sabha without seeking approval of the District Magistrate. It came to the notice of the Consolidation Commissioner that without the order of the District Magistrate as required under the Government Order, only on the basis of the order of the Consolidation Officer, he deleted the name of Gram Sabha and made entries of a private individual. Accordingly, the Consolidation Commissioner wrote to the District Magistrate for putting the appellant under suspension and while doing so, he observed that Appointing Authority of the post of Chakbandi Lekhpal is Settlement Officer (Consolidation).

Mr. A.S. Diwakar, appearing on behalf of the appellant, submits that the appellant made entries in the light of the order of the Consolidation Officer and this itself renders the order of suspension illegal. He also points out that the order of suspension has been passed at the dictate of the Consolidation Commissioner

and this also renders the order of suspension illegal. In support of his submission, reliance has been placed on a decision of the Supreme Court in the case of U.P. State Road Transport Corporation & Anr. Vs. Mohd. Ismail & Ors., AIR 1991 SC 1099, in which the Supreme Court has held that even the High Court cannot direct retrenched driver to be offered an alternative job as it is within the jurisdiction of the Appointing Authority. Reliance has also been placed on another decision of the Supreme Court in the case of Anirudhsinhji Karansinhji Jadeja & Anr. Vs. State of Gujarat, AIR 1995 SC 2390 and our attention has been drawn to paragraph 14 of the judgment, which reads as follows:

"14. The present was thus a clear case of exercise of power on the basis of external dictation. That the dictation came on the prayer of the DSP will not make any difference to the principle. The DSP did not exercise the jurisdiction vested in him by the statute and did not grant approval to the recording of information under TADA in exercise of his discretion."

We do not find any substance in the submission of Mr. Diwakar and the decisions relied on have no bearing on the facts and circumstances of the present case. The Commissioner of Consolidation is an officer higher in hierarchy. When it came to his notice that in the revenue record the name of Gram Sabha has been deleted and the name of individual has been entered, which was not permissible to be done without the approval of the District Magistrate, he brought the said illegality to the notice of the District Magistrate and while doing so, he suggested action which the Appointing Authority should take. No law bars the Appointing Authority to accept the recommendation of a Superior Officer if it is found just and proper. In such circumstance, it cannot be said that the Appointing Authority, while passing the order, acted at the dictate of the Consolidation Commissioner.

Mr. Diwakar then submits that as a Lekhpal, he was bound to carry out the direction of the Consolidation Officer and if he has done so, no misconduct can be attributed to him.

We do not find any substance in this submission also. Taking into account that a large chunk of Gram Sabha land was being recorded in the name of individual person, the State Government directed that before doing so, the approval of the District Magistrate be obtained. It is not the case of the appellant that he had obtained the approval of the District Magistrate.

In that view of the matter, we are of the opinion that the order of suspension does not suffer from any error calling for interference in this appeal.

It is made clear that any observation made by us shall have no bearing in the departmental enquiry pending against the appellant.